

Exhibit E

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DERRELL FULTON aka DARRYL
FULTON,

Plaintiff,

-vs-

CHICAGO POLICE OFFICER
WILLIAM FOLEY, et al.,

Defendants.

) Docket No. 17 CV 8696

) Chicago, Illinois
) December 4, 2020
) 10:30 o'clock a.m.

NEVEST COLEMAN,

Plaintiff,

-vs-

CITY OF CHICAGO et al.,

Defendants.

) Docket No. 18 CV 998

) Chicago, Illinois
) December 4, 2020
) 10:30 o'clock a.m.

TRANSCRIPT OF TELEPHONIC PROCEEDINGS - Motion Hearing
BEFORE THE HONORABLE SUNIL R. HARJANI

APPEARANCES:

For Plaintiff
Fulton:

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1 (The following telephonic proceedings were held
2 remotely:)

3 COURTROOM DEPUTY: Case Number 17 CV 8696, Fulton
4 versus Foley; and Case Number 18 CV 998, Coleman versus City
5 of Chicago.

6 THE COURT: Okay. Good morning, everyone. For the
7 record, this is Judge Harjani speaking. Can I have your
8 appearances please starting with plaintiffs' counsel?

9 MR. CURRAN: Good morning, your Honor. Nicholas --

10 MR. AINSWORTH: Go ahead.

11 MR. CURRAN: Sorry, Russell.

12 MR. AINSWORTH: Go ahead, Nic.

13 MR. CURRAN: This is Nicholas Curran on behalf of
14 Plaintiff Fulton.

15 MR. AINSWORTH: And this is Russell Ainsworth
16 appearing on behalf of Mr. Coleman.

17 THE COURT: Okay. Good morning. And then for
18 defendants taking -- as always, taking one by one generally
19 the order as listed in the complaint if you remember that.
20 Go ahead.

21 MR. MORAN: Good morning, Judge. This is Pat
22 Moran. I represent the police officer defendants in both
23 lawsuits.

24 MR. GRILL: Good morning, your Honor. This is
25 Andrew Grill. I, along with Mr. Moran, represent the police

1 officer defendants in both lawsuits as well.

2 MS. MEADOR: Good morning, your Honor. This is
3 Lisa Meador -- with me is Sara Schroeder -- on behalf of the
4 City of Chicago.

10:36AM

5 MS. KUNZER: Good morning, your Honor. This is Amy
6 Kunzer. I'm representing the County and Harold Garfinkel.

7 MR. HENRETTY: Good morning, your Honor. This is
8 Lyle Henretty and we have Jessica Scheller here for the
9 Respondents.

10:36AM

10 THE COURT: Okay. That sounds like that's
11 everybody. Okay. Thank you for your time.

12 We're here today for me to give you a ruling on the
13 motion that is pending before me, which is the Motion to
14 Quash the deposition subpoena of Eric Sussman and essentially
15 through the briefing to also include Mark Rotert and I've
16 reviewed the motion, which was filed -- it has Docket Number
17 238. I reviewed the -- all the responses that were submitted
18 and the reply brief and the surreply brief that has been
19 submitted along with the affidavit of Jessica Scheller.

10:37AM

20 Okay. And I'll give you my ruling.

21 Any updates, though, on this matter before I give
22 you my ruling, plaintiffs' counsels?

23 MR. CURRAN: This is Nicholas --

24 MR. AINSWORTH: Nothing to update.

10:37AM

25 THE COURT: Mr. Ainsworth, nothing -- I think you

1 said nothing to update?

2 MR. AINSWORTH: That is correct, Judge.

3 THE COURT: Okay. And for the Respondents,
4 anything to update?

10:37AM 5 MR. HENRETTY: No, your Honor.

6 THE COURT: Okay.

7 COURT REPORTER: I'm sorry. Court reporter, court
8 reporter. I'm not sure who said "No, your Honor."

9 MR. HENRETTY: Sorry. Lyle Henretty for the
10 Respondents. No, your Honor.

10:37AM 11 THE COURT: Okay. And then for the defendant
12 officers? Again, as always, state your name before you
13 respond. Go ahead. Defendant officers? Hello?

14 MR. GRILL: Sorry. This is Andrew Grill --

10:38AM 15 MR. MORAN: This is Pat Moran --

16 MR. GRILL: -- I was on mute. Nothing to update
17 for the defendant officers.

18 THE COURT: Okay. And the City?

19 MS. MEADOR: Lisa Meador, your Honor. There is
10:38AM 20 nothing to update for the City as well.

21 THE COURT: Okay. Thanks. I know it's not easy.
22 Normally, I would just ask you and in court I would look at
23 your faces and I would know there's nothing to update but
24 we're not there and so we have to go through this rigmarole
10:38AM 25 by doing this by phone.

1 All right. The Court has considered, as mentioned,
2 all of the issues along with the briefing as well as the
3 arguments of the parties on this Motion to Quash and the
4 Court finds as follows:

10:38AM 5 First, the information that the defendants seek
6 from Mr. Sussman and Mr. Rotert constitutes relevant
7 information. It is anticipated that the plaintiffs will seek
8 to introduce the Certificate of Innocence as well as the fact
9 that the Cook County State's Attorney's Office first decided
10:39AM 10 to ask for a retrial and then decided to dismiss the charges
11 and to use those various positions and the Certificate to
12 argue that it is indicative of innocence. And, indeed, the
13 Seventh Circuit in the *Patrick* case affirmed the introduction
14 of that evidence recently. Certainly there were some bases
10:39AM 15 in there for the defendants to argue that it shouldn't be
16 admitted, nevertheless the Court must anticipate that the
17 District Court may very well introduce this evidence, both
18 the Certificate of Innocence, along with the various
19 positions by the State's Attorney's Office.

10:40AM 20 And in particular, the Court sees the way it was
21 used in prior cases, particularly the *Harris* case. In *Harris*
22 *v. City of Chicago*, the court notes that it was --
23 plaintiffs' counsel used these pieces of evidence to argue
24 the fact of innocence and also argued that the State's
10:40AM 25 Attorney's Office could have opposed the motion to dismiss

1 and chose not to as indicative of innocence; and that *Harris*
2 case is that 2018 WL 2183992.

3 And so while the Certificate of Innocence in
4 particular the Court understands does not have res judicata
10:40AM 5 effect under Illinois law and even though there is some
6 language in the Certificate of Innocence demonstrating that
7 it is not a concession by the SA, the State's Attorney, that
8 the defendant is innocent, nevertheless the -- these pieces
9 of evidence the Court has to assume that plaintiffs may try
10:41AM 10 to use that as indicative of evidence -- of innocence at
11 trial and that it is relevant for the defendants to then
12 explore rebuttal evidence designed to show or argue that
13 these decisions by the State's Attorney and the Certificate
14 of Innocence is not automatically indicative of innocence,
10:41AM 15 that just because these decisions were made does not mean
16 that the defendant -- that the plaintiffs are innocent.

17 So this is an issue that will likely occur at
18 trial. It is for the jury to give weight and decide whether
19 or not these decisions are able to allow for that inference
10:42AM 20 of innocence or not and I understand that courts oftentimes
21 provide limiting jury instructions on this matter. But,
22 nevertheless, the relevance here is what is significant and
23 the relevance is to allow defendants the opportunity in
24 discovery to explore evidence designed to rebut that
10:42AM 25 potential inference of innocence and the arguments associated

1 with it.

2 The -- moreover, there's at least factors before me
3 that demonstrates that the defendants' arguments may have
4 merit and are worthy of exploration in discovery. The
10:42AM 5 State's Attorney's belief does not equate the issuance of a
6 Certificate of Innocence as indicative of innocence and talks
7 about how there's more to the story. There are factors
8 besides actual instances that are considered and that's
9 evident from the various needed interviews given by
10:43AM 10 Mr. Rotert and discussions publicly about what goes into
11 consideration, including statements made in court, at the
12 time certain decisions are not opposed or made.

13 And so the Court finds that -- and essentially the
14 affidavit of Ms. Scheller gives some light that there are
10:43AM 15 decisions besides actual innocence that go into the calculus.
16 This does not seem to be an issue of dispute and so in that
17 there is relevance here to that exploration.

18 And while the Court understands the Respondents
19 have argued that it is the state court judge that decides
10:44AM 20 whether or not to grant the Certificate of Innocence, it is
21 still important that the State's Attorney's Office does not
22 object. This is an adversarial proceeding; and with an
23 objection, it likely there would be a hearing. With no
24 adversarial proceeding and a non-objection or taking no
10:44AM 25 position, it is likely that the Certificate of Innocence will

1 be granted and that's what happened here.

2 So while the Court understands that the State's
3 Attorney's Office might have a final say in the matter, it is
4 still an important part of the process. And why the State's
10:44AM 5 Attorney's Office chose not to object is important to rebut
6 arguments made by the plaintiff at trial because it is a
7 significant factor in the granting of the Certificate of
8 Innocence.

9 So overall, the first consideration here is whether
10:45AM 10 or not the information is relevant; and for the reasons the
11 Court has just discussed, the Court finds that the relevancy
12 basis is met.

13 Second, the issue is whether or not Mr. Sussman and
14 Mr. Rotert are the right individuals and the Court finds they
10:45AM 15 are for purposes of deposition. They were personally
16 involved in the decisions here, there's really no dispute
17 about that, and they will have relevant information to share.
18 And while the State's Attorney's Office offered a compromise
19 Rule 30(b)(6) witness, that offer was rejected and the Court
10:45AM 20 suggested a compromise but that was not accepted and, of
21 course, the defendants are not obligated to accept a
22 compromise and what the deposition subpoena was for Sussman
23 and Rotert and then the Court will accordingly rule on the
24 motion as it stands. And all that's required under the
10:46AM 25 Federal Rules is that individuals who are noticed, to the

1 extent they meet issues of relevance and proportionality, may
2 have personal knowledge about the issue at hand. And in this
3 case, Sussman and Rotert both have personal knowledge about
4 the issues that we are discussing and therefore the -- their
5 witnesses are appropriate for purposes of deposition on these
6 issues.

7 Third, the Court finds that the Apex Doctrine does
8 not bar the testimony of Mr. Sussman and Rotert. Both are no
9 longer at the State's Attorney's Office. They are no
10 longer sen -- no longer at senior government-level positions.
11 So the com -- the issues that are commonly discussed by the
12 Apex Doctrine, such as the responsibilities of senior-level
13 officials and their time commitments associated with those
14 positions in not having to be distracted or not having to be
15 pulled away from their official duties by constantly giving
16 depositions, those factors the Court finds are not relevant
17 here. They are both out of senior-level government positions
18 at this time and the Court also notes that they recently
19 testified in the *Brown* case on several topics and the Apex
20 Doctrine certainly did not bar their testimony in that case.
21 And in addition for purposes of current circumstances, they
22 are -- their depositions will be done remotely and that also
23 will minimize the time associated and the -- with taking
24 these depositions.

25 Fourth, the key issue here that has been raised by

1 the parties is the issue of the deliberative process
2 privilege and the work product privileges and as it relates
3 to Sussman and Rotert because, of course, they were engaged
4 in internal deliberations about whether to seek a new trial,
5 whether to dismiss the charges, and whether or not to oppose
6 the Certificate of Innocence. And it's clear to the Court
7 from reading the briefs that the defendants seek to inquire
8 as to the reasons for those actions and that implicates the
9 deliberative process and work product privileges.

10 At the outset, the Court finds that the affidavits
11 submitted by the Respondents provides a reasonable and
12 sufficient basis to invoke the privilege. The affidavits
13 certainly could have been better; and I recognize the
14 defendants' arguments on that matter. There is certainly
15 more than just facts in there. There is some argument in
16 that affidavit which is not appropriate for purposes of an
17 affidavit. However, the affidavit combined with multiple
18 representations by the Respondents in its brief and during
19 several discussions on this motion with the Court, the Court
20 finds it's sufficient to invoke preliminarily the
21 deliberative process and work product privileges on this
22 issue.

23 The next issue for the Court to consider is whether
24 or not the issues -- again, when I say "these issues," I'm
25 talking about the motion to seek a retrial and then to

1 dismiss and then a Certificate of Innocence do not oppose it.
2 The respond -- the defendants argue that these issues here
3 are post-decisional but the Court finds that that is not the
4 case and that the inquiry that the defendants seek here are
5 pre-decisional.

6 The final decision, if you will, here publicly was
7 made to dismiss the case and then to not oppose the
8 Certificate of Innocence. Those are the final decisions of
9 the agency. The reasons for it are pre-decisional. They are
10 not necessarily publicly made in court. They are, therefore,
11 not part of the final decision that was made by the agency.
12 The final decision is to not oppose to seek new trial, to
13 seek a dismiss and therefore the -- what defendants really
14 seek is the rationale of logic behind these ultimate and
15 final decisions. And so the Court finds that the rationale,
16 if you will, is pre-decisional.

17 And the Court is guided by many of the cases
18 associated with deciding this issue, particularly on the
19 *Saunders case versus City of Chicago* and the *Allen versus*
20 *Chicago Transit Authority* case that discusses the doctrine of
21 deliberative process privilege.

22 Next, the Court considers the various factors
23 discussed of the privileges and finds that the defendants
24 cannot so easily pierce the privilege, if you will, because
25 there is other evidence that can address the issue of whether

1 these decisions equate to a decision on innocence. That is,
2 even though these privileges are not absolute, the Courts do
3 consider whether or not other evidence can suffice in
4 allowing the issue to be explored and the Court finds that it
5 can; and I'll explain that in a minute.

6 The issue, however, here is whether or not the
7 depositions can be fully quashed completely as a result of
8 the invocation of the privilege and the Court finds that that
9 cannot be the case. As with any privilege, there must be a
10 question-by-question or topic-by-topic analysis or, in a case
11 of a document, a document-by-document analysis as to whether
12 the information that item is privileged or not. It's much
13 like documents are used for privilege, one cannot say that
14 everything a witness has to testify about in the universe of
15 his knowledge is privileged. There must be a more particular
16 inquiry. And here, that is particularly important because
17 there are topics that have been waived, number one; and,
18 number two, there are topics that are outside the relevant
19 privileges.

20 The topic first concerning the reasons the
21 Respondents moved for a retrial and then moved to dismiss
22 have been waived. There have been several public discussions
23 of the issue by both Mr. Sussman and Mr. Rotert and by
24 State's Attorney Kim Foxx. In particular, Mr. Rotert gave a
25 lengthy interview where he discussed some of his rationale

1 for the positions that were taken by the State's Attorney.
2 Mr. Sussman made some brief statements on the issues
3 regarding new DNA evidence. And so there are public
4 statements out there as to the reasons why the State's
10:53AM 5 Attorney's sought first a retrial and then sought to dismiss.
6 And while those public statements may not have included all
7 the reasons, the Court finds that these statements made
8 publicly are sufficient to constitute a waiver as to the
9 reasons for the decision for a retrial and then dismissal of
10:53AM 10 the conviction in this case. And the Court is informed by
11 the decision by Judge Valdez in the *Hood* case regarding
12 Governor Quinn and much of the same factors that played into
13 that decision are present here.

14 There was some argument in the briefings that the
10:54AM 15 disclosure of witness interviews may constitute a waiver --
16 regarding the reinvestigation constitutes a waiver and the
17 Court does not find that persuasive. Witness interviews
18 primarily contain factual materials, factual information
19 about what witnesses have said and, of course, facts are not
10:54AM 20 protected by the privilege; only the internal deliberations
21 and the work product are protected. Of course anything that
22 a lawyer writes down the Court understands somehow does
23 implicitly, you know, involves some degree of a mental
24 impression but generally factual information taken down by
10:55AM 25 lawyers about a witness interview is primarily fact-related

1 and so the Court finds that just because witness interviews
2 were produced doesn't mean there's a waiver; nevertheless,
3 the public interviews by the various officials I mentioned is
4 the basis for finding a waiver on the issue of the motion to
5 retry and then the motion to dismiss.

6 The second big topic is concerning the Certificate
7 of Innocence and the Court finds that that -- the privileges
8 associated with that have not been waived. There has been no
9 similar public statements that have been made. The internal
10 deliberations regarding the decision to not oppose the
11 Certificate of Innocence has not been revealed publicly and
12 thus the privileges are maintained as to the reasons why the
13 Certificate of Innocence was not opposed in this case.

14 Finally, there are topics that you may have
15 discussed during a deposition here that will allow the
16 defendants to challenge the eventual arguments expected from
17 the plaintiffs that these decisions are indicative of
18 innocence while still maintaining the privilege so the right
19 result here is somewhere in between the two positions. It is
20 not to disregard or find the privilege inapplicable as the
21 defendants may seek, nor is a full quash of the subpoenas at
22 the outset as Respondents seek. Rule 26, along with the
23 Court's inherent authority to manage discovery, allows the
24 Court to limit discovery to the extent necessary to
25 effectuate Rule 1's purposes.

1 And so these are the topics the Court will permit
2 at the deposition of Sussman and Rotert in line with the
3 decision the Court has made today. And, of course, I know
4 you'll order this transcript so it will be clear to you when
5 you order it and get it but here they are, nevertheless.

6 Number one, the policies and procedures followed
7 during the reinvestigation by the Conviction Integrity Unit
8 as well as any policies and procedures followed with respect
9 to the Certificate of Innocence, okay. These policies and
10 procedures are the general policy and procedures that the
11 State's Attorney's Office follows -- if there are any, if
12 they indeed do exist -- with regard to the decision to not
13 retry, to dismiss, and to not oppose the Certificate of
14 Innocence. They do not necessarily -- because they're
15 policies and procedures, they don't necessarily apply to this
16 case as well. They are the general policy and procedures and
17 the Court finds that's -- that's relevant because it is
18 important to give context to the ultimate decision that was
19 made to allow the jury to understand what policies and
20 procedures exist and how the decision is made by the State's
21 Attorneys Office about these issues.

22 The second topic the Court will allow is whether
23 those policies and procedures were followed in this case on
24 both the issues. They both made the decision to
25 retry/dismiss, which I often lump into one, and the decision

1 on the Certificate of Innocence. So this doesn't mean that
2 you get to explore the underlying reasons -- I'll get to that
3 in a moment -- but it's just a question of whether or not the
4 general policies and procedures were followed in this case,
10:59AM 5 if they even exist. And those are relevant again to support
6 the parties' various arguments that there was a process for
7 the reinvestigation into decisions and to give context and
8 legitimacy to the ultimate decision made by the State's
9 Attorney's Office so that both sides can argue the facts in
10:59AM 10 their own way for their own purposes.

11 The third topic the Court will allow will be the
12 nature and sources of materials reviewed during the
13 investigation on both issues. Again, both have the decision
14 of retry/dismiss as well as a Certificate of Innocence.
10:59AM 15 These are just discussing the nature and source of materials.
16 They're not -- they are not -- they are not invading the
17 deliberative process privilege or the work product privileges
18 so testimony such as reconsidered the witness interviews,
19 reconsidered DNA evidence, things like that, are going to
11:00AM 20 give context to the ultimate decision that is -- that was
21 made by the State's Attorney's Office.

22 With respect to topic four, which is the motion to
23 retry and then to dismiss, the Court has already stated that
24 the -- it finds that the privileges have been waived on this
11:00AM 25 topic and so the Respondents -- excuse me, the defendants can

1 inquire as to the decisions -- to the reasons why the State's
2 Attorney decided to first retry and then dismiss the case
3 against the plaintiffs.

4 Okay. Five, the Court will allow testimony about
5 the general factors considered by the State's Attorney's
6 Office in evaluating generally whether to oppose or not
7 oppose a Certificate of Innocence without consideration of
8 this particular case. The Court has found that the
9 deliberative process privilege does apply and the work
10 product relationship does still apply with respect to the
11 Certificate of Innocence and therefore the defendants cannot
12 explore the exact reasons in this case for why the
13 Certificate of Innocence was not opposed.

14 However, the general factors considered, the Court
15 finds, in all cases does not invade the deliberative process
16 privilege or the work product -- the work product privileges.
17 Indeed, in the affidavit of Jessica Scheller, she has already
18 disclosed that there are other factors beyond the issue of
19 innocence in making the decision. In fact, I think she said
20 "the CCSAO decides not to intervene on Certificates of
21 Innocence for many reasons oftentimes based on procedural,
22 collateral, or evidentiary flaws unrelated to the CCSAO's
23 belief in whether the individual is guilty of the charged
24 crimes."

25 And so the Court finds that the general factors

1 that are considered by the State's Attorney's Office don't
2 invade the pre-decisional discussions and frankly are already
3 talked about by the State's Attorney's Office in this filing.
4 And beyond that, this general factors the Court believes will
5 give the defendants enough to counter arguments that the
6 Certificate of Innocence is representative of innocence.
7 While they will not know the exact reasons for this case why
8 the Certificate of Innocence was not opposed because of the
9 privilege, the Court finds the general factors will be enough
10 to make the argument and to allow the jury to make various
11 inferences from the arguments that are made by counsel.

12 Topic six will be allowed is the statements made by
13 counsel for the plaintiffs to the State's Attorney's Office,
14 to Sussman and Rotert, during the investigation, decision on
15 retrial, dismissal, or Certificate of Innocence. Third-party
16 comments, of course, by counsel for plaintiffs are not
17 subject to the privilege. They're not internal deliberations
18 by the State's Attorney's Office and the Court finds that
19 these statements might -- might in some way provide some
20 helpful information with respect to the defendants' argument
21 about innocence versus non-innocence for these decisions.

22 And seven, the Court finds that statements to the
23 press on these issues are not subject to the privilege, of
24 course, if made publicly; and again, they may contain
25 relevant details or reasons for this decision. Of course,

1 the Court is not in any way discussing admissibility here.
2 Relevancy is broader than admissibility. Discovery can take
3 you to count things that do not -- are not ultimately
4 admissible. But for purposes of discovery, the Court finds
5 that there's a sufficient basis to allow this inquiry given
6 what has happened in past cases and given what the plaintiff
7 potentially seeks to do here.

8 So just to make -- one more time, generally the
9 topics that the Court has provided, which is our seven
10 topics, are generally not covered by the deliberative process
11 or work product privileges except for number four, which is
12 the decision to retry and then to dismiss. That topic, the
13 Court has found, has been waived as a result of the public
14 discussion of the issue.

15 And in making this decision, the Court has formed
16 and -- informed and finds persuasive the reasoning of Chief
17 Judge Pallmeyer in the *Brown* case, which employed a similar
18 analysis as this Court, involving the same two witnesses and
19 involving essentially identical issues. And while the
20 Court's decision may differ here and there from what Judge
21 Pallmeyer's reasoning is, nevertheless the Court has found
22 persuasive the majority of what Judge Pallmeyer discussed in
23 her ruling on the *Brown* case. And so that is the decision of
24 the Court.

25 The Motion to Quash, which is Docket Number 238, is

1 denied and -- however, the Court has -- in evaluating this
2 issue has placed various limitations on the deposition of
3 Mr. Sussman and Mr. Rotert as I just discussed in allowing
4 these depositions to go forward and that is the ruling of the
5 Court.

6 So the question that we have is when these
7 depositions can get done. So I'll allow Respondents to go
8 since you're producing the witnesses. I'm, of course,
9 sensitive to the fact that the holiday is coming up and you
10 are a third party not involved in this litigation but,
11 nevertheless, I do want to try to get this done fairly soon
12 because we are essentially at the end of discovery.

13 So, Respondents, give me some thoughts on time
14 frame, if you can. If you need more time, that's fine as
15 well.

16 MR. HENRETTY: Your Honor, this is Lyle Henretty.
17 I obviously have to talk to the two individuals again about
18 this given time. I think, you know, certainly we could get
19 this done by mid January given my schedule and, you know, we
20 have a lot going on right now but that would be what I would
21 ask.

22 And then also, just sort of a request, given -- you
23 know, it seems like similar what happened with the *Brown*
24 case, I would ask that these depositions be limited in time
25 from the seven hours down to, I think Judge Pallmeyer

1 ordered, three hours.

2 THE COURT: Okay. I did read the transcripts. I
3 did think that all the questions that needed to be asked
4 seemed to be done in three hours but let me throw it to the
5 defendants now to talk about the time frame about getting
6 this done by mid January along with the number of hours of
7 the deposition. Defendant?

8 MR. MORAN: Judge, this is Pat Moran. I think mid
9 January is fine. The only potential hiccup there is we
10 are -- it appears all the press statements were not produced
11 by the State's Attorney Office and the State's Attorney's
12 Office has requested a subpoena from us and we need to confer
13 with the plaintiffs' attorney to see if there's an objection
14 to that. If there isn't, I don't think it would be -- it
15 would be anything to delay this timeline that has been
16 proposed. So I think January 15th, setting that aside,
17 should be okay. Were you going to say something?

18 MR. HENRETTY: Me? No.

19 MR. MORAN: No. I heard a noise so I thought you
20 were trying to interject.

21 MR. HENRETTY: No problem.

22 MR. MORAN: And then as for the time limit on the
23 depositions, Judge, that wasn't requested in the motion for
24 starters. I don't think it's particularly fair to throw it
25 out now. But setting that aside as well, it doesn't look

1 like these motions -- or these transcripts -- I'm sorry, the
2 depositions would be completed in three hours. I think --
3 you know, I'm not saying we definitely need a full seven
4 hours but I also believe that this isn't an apples-to-apples
5 comparison to the *Brown* case.

6 For starters, there's two claimants here, not one,
7 and it seems to be more complicated because of that and
8 there's different involvement between -- alleged involvement
9 between Fulton and Coleman because -- so I think -- and
10 different considerations between both of them. So I think a
11 three-hour limitation I don't think is reasonable or
12 warranted in this case. I think, you know, we should be
13 allowed to just take a deposition consistent with the rules.
14 We're not interested in prolonging depositions just for the
15 sake of doing it so -- you know, and we've been able to
16 handle, you know, privilege issues and things like that just
17 fine. And the depositions that have gone thus far -- for
18 example, we took the defense attorneys' depositions and when
19 privileges were waived, there wasn't like extensive debate
20 about that. So I think -- I think the three-hour limit is
21 not something that should be imposed in this particular case.

22 THE COURT: Okay. So I'll tell you what I'm going
23 to do. I hear both of your arguments. At this time, I'm not
24 going to impose any limitations. I'm going to trust that the
25 defendants and the plaintiffs, who are experienced counsel

1 here, are going to move expeditiously through this -- these
2 depositions. I know there are two plaintiffs here and so
3 that's a factor. I know that the defendants have to cover
4 issues that may be associated with two plaintiffs and then
11:10AM 5 you have two plaintiffs' counsel who may want to ask
6 questions at the end so at this time I'm not going to impose
7 any limitations.

8 I would suggest that if after the first deposition
9 for some reason Respondents feel that their deposition was
11:11AM 10 not done expeditiously and was wasting time, you can come
11 back to me on a motion but you're all experienced counsel
12 here. The rules allow for a deposition of seven hours and I
13 don't see a basis here to limit it at this time for the
14 reasons I've stated.

11:11AM 15 Okay. So with respect to the time frame, I will
16 order these depositions to be completed by January 15th of
17 2021. Okay. With that, Respondents, anything else at this
18 time?

19 MR. HENRETTY: This is Lyle Henretty. I don't
11:11AM 20 believe so, your Honor.

21 THE COURT: Okay. Defendants, anything else?

22 MR. MORAN: Not from the defendant police officers.

23 COURT REPORTER: I'm sorry. This is the court
24 reporter. Who was that?

11:12AM 25 MR. MORAN: I'm sorry. This is Pat Moran for that.

1 THE COURT: Okay. City of Chicago?

2 MS. MEADOR: Lisa Meador. No, no other issues.

3 Thank you, your Honor.

4 THE COURT: Okay. For Mr. Fulton?

11:12AM 5 MR. CURRAN: No -- excuse me. No, your Honor.

6 THE COURT: Okay. And that was Mr. --

7 MR. CURRAN: I apologize. Nicholas Curran on
8 behalf of Plaintiff Fulton.

9 THE COURT: That's okay. And Mr. Coleman?

11:12AM 10 MR. AINSWORTH: This is Russell Ainsworth. Nothing
11 from Mr. Coleman.

12 THE COURT: Okay. Thank you all for your time.

13 Everyone have a good weekend. We're adjourned.

14 (Proceedings concluded at 11:12 a.m.)

11:14AM 15

16 C E R T I F I C A T E

17 I hereby certify that the foregoing is a telephonic
18 transcript of proceedings before the Honorable Sunil R.
19 Harjani on December 4, 2020.

20

21

22 /s/Laura LaCien
23 Official Court Reporter

December 7, 2020
DATE

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